



OHIO SENATE JUDICIARY COMMITTEE

October 29, 2025

Opponent Testimony House Bill 126

Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Ohio Senate Judiciary Committee:

I am Jonathon McGee, and I am General Counsel of the Ohio Municipal League. On behalf of OML, thank you for the opportunity to provide opponent testimony regarding the OML's position on House Bill 126, which takes away a vital tool to protect communities.

Introduction

House Bill 126 “attempts” to codify an Ohio Supreme Court decision: *In re National Prescription Opiate Litigation*, 179 Ohio St.3d 74 (2024)(herein “*Opiate Litigation*”). If enacted, municipalities will no longer be able to bring claims to hold manufacturers, distributors, and retailers responsible for widespread harm caused in the local community.

Background

The *Opiate Litigation* case arose in a trial before the US District Court in Northern Ohio. In that litigation, two Ohio counties¹ obtained a monetary verdict against certain national pharmacy chains as they “created, perpetuated, and maintained” the opioid epidemic in Ohio by filling opioid prescriptions without controls in place to safeguard distributing illicitly prescribed medications. The counties legal claim was based upon the **common-law** cause of action of public nuisance. On appeal to the US Sixth Circuit Court of Appeals, the Sixth Circuit asked for the Ohio Supreme Court to answer whether the Ohio Product Liability Act “abrogates the **common law** claim of absolute public nuisance resulting from the sale of a product in commerce in which the plaintiffs seek equitable abatement, including both monetary and injunctive remedies.” *Opiate Litigation*, at para. 9 (emphasis added).

The Supreme Court responded: “we answer the certified question in the affirmative and hold that all **common-law** public-nuisance claims arising from the sale of a product have been abrogated by the Ohio Product Liability Act, R.C. 2307.71 et seq. (“OPLA”).” *Id.*, at para. 1 (emphasis added).

HB 126 should not be Passed

First, HB126 may violate Municipal Home Rule authority as this legislation will preempt municipalities from protecting their citizens and from holding bad actors accountable when their products harm public health and safety. These bad actors could no longer be sued by municipalities under public nuisance law, even if their actions cause massive harm to communities. If this law had been in place decades ago, municipalities would have been powerless to take legal action against lead paint, big tobacco and

¹ Trumbull and Lake.

environmental polluters. Local communities need to be able to continue to protect their residents from such widespread harm.

Second, the bill goes beyond the case holding by eliminating **statutory** public nuisance actions under current ORC 715.44. In the federal case that spawned the above decision, the counties' claim was based upon the **common-law** cause of action of public nuisance, seeking both injunctive relief and monetary damages. The question from the Sixth Circuit asked the Ohio Supreme Court to answer whether the Ohio Product Liability Act "abrogates the **common law** claim of absolute public nuisance." *Id.*, at para. 9 (emphasis added). The Supreme Court answers this question holding that "all **common-law** public-nuisance claims arising from the sale of a product have been abrogated." *Id.*, at para. 1 (emphasis added).

But the Ohio Supreme Court did not address ORC 715.44's statutory cause of action², and its holding only applies to common law claims. So, to the extent that this bill modifies ORC 715.44 by eliminating the statutory cause of action, it is not merely codifying the case holding.

You may hear a lot about what the legislature intended with its amendments to the OPLA in 2005³ and 2007⁴. What is clear from the language of those Acts is that the legislature only intended to abrogate common law product liability causes of action, not statutory. SB 80 spelled out that "Sections 2307.71 to 2307.80 of the Revised Code are intended to abrogate all **common law** product liability causes of action." (emphasis added). The 125th GA even went so far as to spell out that its intent was the abrogation of common law product liability claims in Section 3(D) of the bill. Two years later in SB 117, the 126th GA, again in Section 3 of the Act, clarified that the "original intent" of SB 80 was to abrogate all "**common law** product liability causes of action including **common law** public nuisance causes of action."

When the legislature acted in 2005 and 2007, the statutory nuisance cause of action was then in existence and neither Act touches section 715.44. ORC 715.44 has not been amended since the general code was replaced by the Revised Code in 1953. While it may have been the intent of the legislature to abrogate the common law, it did not alter statutory law. The question presented to the Supreme Court related to the common law, and its holding is so limited to answering the question presented. As such, any attempt to change 715.44 goes beyond the Supreme Court's holding.

Third, proposed 2307.801(B) states that the general assembly "declares its intent to expressly codify the [*Opiate Litigation*] holding ...regarding the abrogation of public nuisance claims at **common law**." Sub HB 126, at line 200 (emphasis added). So, to an extent, division (B) gets the holding correct, but then goes beyond that holding by eliminating the statutory cause of action. Also, adding a case to the Code will cause unneeded arguments about the meaning of the case in interpreting this new provision, if enacted. Usually, such pronouncements of intent are found in uncodified law and they usually state the legislature's intent to abrogate decisions or to ask the courts to reconsider earlier decisions (see, *e.g.*, Section 3(D) and (E), SB 80). By including the holding of the Supreme Court in Code, the legislature will be ceding some of its legislative authority to another branch of government.

Fourth, under current law there is no mechanism for recovery by a municipality under the OPLA because it does not allow for claims for solely economic loss. OPLA has always been for personal injury claims and claims for damage to property, not for when a governmental entity has to pay money to clean up a mess. Thus, governmental entities have never been able to sue under OPLA but had always been able to

² "A municipal corporation may: (A) Abate any nuisance and prosecute in any court of competent jurisdiction, any person who creates, continues, contributes to, or suffers such nuisance to exist..." ORC 715.44(A).

³ Am. Sub. SB 80, 125th GA.

⁴ Am. Sub. SB 117, 126th

sue outside OPLA under 715.44. With this bill, local governments still cannot sue within OPLA, and now they cannot sue outside OPLA. In effect, HB126 provides total immunity for product manufacturers.

Fifth, in the future, Ohio's municipalities will be unable to participate in any multi-jurisdictional settlements, such as the opioid settlement, as they will be prevented by Ohio law from even filing such a suit. We have no idea what products may be coming down the line with quantum computing and AI, but what we do know is that if HB 126 becomes law, Ohio's local governments will be powerless to hold manufacturers accountable, no matter the damage.

Conclusion

The OML opposes HB 126 as it most likely violates Home Rule, that it goes beyond the mere codification of the decision, and that it eliminates a statutory cause of action that has long been in place.